# PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

1989/90

# annual report

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PUBLIC SERVICE

EMPLOYEE RELATIONS BOARD

# ANNUAL REPORT
for the
# FISCAL YEAR ENDING MARCH 31, 1990

PUBLISHED BY AUTHORITY OF THE
PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

EDMONTON, ALBERTA

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To Her Honour
W. Helen Hunley
Lieutenant Governor of the Province of Alberta

May it please your Honour,

On behalf of the Public Service Employee Relations Board, I respectfully submit to you the Annual Report for the period from April 1, 1989, to March 31, 1990, pursuant to the requirements of Section 77 of the Public Service Employee Relations Act, Revised Statutes of Alberta, 1980, Chapter P-33 and amendments thereto.

Respectfully submitted,

Ken Rostad
Attorney General

To The Honourable Ken Rostad
Attorney General

Sir:

I have the honour to submit to you, on behalf of the Public Service Employee Relations Board, the Annual Report of the Board for the fiscal period April 1, 1989, to March 31, 1990.

Respectfully yours,

Thomas W. Wakeling
Chairman

# personnel

PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

Chairman — Thomas W. Wakeling

Alternate Chairman — Kenneth J. Alyluia

Members —

Thomas K. Biggs

Jack Dyck

William Kondro

A. Roderick Turpin

Executive Director — John F. Elsinga

Secretary — Gordon P. Procinsky

# ANNUAL REPORT
# OF THE
# PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

### FOR FISCAL PERIOD ENDING MARCH 31, 1990

# introduction

The Public Service Employee Relations Act, Revised Statutes of Alberta 1980, Chapter P-33 came into force on September 22, 1977, upon proclamation by Order in Council 965/77. It was amended in 1983 and again in 1985.

Section 17 of the statute embraces the right of an employee to be a member of and to participate in the lawful activities of a trade union, and to bargain collectively with an employer through a bargaining agent. The Act prescribes final and binding arbitration for the resolution of collective bargaining disputes and prohibits strike or lockout action. An employer and bargaining agent may at any time in their collective bargaining make joint application for the appointment of a mediator to assist in settling their dispute.

The legislation also requires that every collective agreement contain a procedure for the resolution of differences between the contracting parties as to the interpretation, application, operation or alleged contravention of their collective agreement.

The Public Service Employee Relations Act describes in considerable detail the basis upon which employees are to be included in or excluded from a bargaining unit of employees. In that regard Sections 9 and 21 of the Act confer authority upon the Public Service Employee Relations Board to make final and binding determinations where the bargaining agent and employer are unable to settle the matter of employee status for collective bargaining purposes.

Section 48 of the Act precludes the referral of certain items in dispute between the bargaining parties to arbitration. The Public Service Employee Relations Board has the responsibility and authority under the statute to make such determinations, a function that is an integral part of the Board's activities with respect to each application it receives seeking the establishment of an arbitration board for the resolution of a collective bargaining dispute.

Part 8 of the Act prohibits employees, employers, trade unions and persons acting on their behalf from engaging in certain activities commonly referred to as unfair practices. In this part of the statute, the Public Service Employee Relations Board is given authority to inquire into complaints alleging such unfair practices and to impose remedial action when satisfied upon inquiry as to the substance of the complaint.

# overview

As in the preceding year, a significant part of the Board's caseload during the 1989/90 reporting period concerned the processing of applications by employers and bargaining agents seeking the Board's determination as to the bargaining unit status of persons engaged in public sector employment. For example, persons who function in personnel activities or in payroll-related tasks were the subject of extensive inquiries by the Board. The question as to the bargaining unit status of persons engaged to provide services on a contractual basis was also raised in the context of several applications heard by the Board in the year under review.

The Board recorded an increase during this period in the number of applications made to it seeking the establishment of arbitration boards for the resolution of collective bargaining disputes. Requests for the appointment of persons to chair adjudication boards established to resolve grievances declined slightly from the number processed by the Board in the previous year.

Several of the decisions issued by the Board during the 1989/90 period were challenged by way of judicial review proceedings and are recorded elsewhere in this report.

# application

The Public Service Employee Relations Act governs collective bargaining and related matters for more than 55,000 public service employees and their employers within the Province of Alberta. The majority of those employees are employed directly by the Crown in right of Alberta in the various departments of the provincial government's administration. They are represented by The Alberta Union of Provincial Employees as their bargaining agent, and function under a common Master collective agreement and twelve supplementary contracts, structured on occupational groupings.

Other employers and their employees to whom the Public Service Employee Relations Act applies include the following:

Corporations
- Alberta Mortgage and Housing Corporation
- Alberta Oil Sands Technology and Research Authority
- Alberta Opportunity Company
- Hail Crop Insurance Corporation

Commissions
- Alberta Alcoholism and Drug Abuse Commission
- Alberta Petroleum Marketing Commission
- Alberta Racing Commission

Universities (academic staff excluded)
- Athabasca University
- University of Alberta
- University of Calgary
- University of Lethbridge

Colleges (academic staff excluded)
- Alberta College of Art
- Banff Centre
- Fairview College
- Grande Prairie Regional College
- Grant MacEwan Community College
- Keyano College
- Lakeland College
- Lethbridge Community College
- Medicine Hat College
- Mount Royal College
- Olds College
- Red Deer College

Technical Institutes (academic staff excluded)
- Southern Alberta Institute of Technology
- Northern Alberta Institute of Technology

| | |
|---|---|
| Hospitals | — Alberta Cancer Board<br>— Alberta Children's Provincial General Hospital<br>— Charles Camsell Provincial General Hospital<br>— Foothills Provincial General Hospital<br>— Glenrose Rehabilitation Hospital<br>— The Mental Health Hospital Board, Edmonton<br>— The Mental Health Hospital Board, Ponoka<br>— University Hospitals Board |
| Boards | — Teacher's Retirement Fund Board<br>— Workers' Compensation Board<br>— Alberta Liquor Control Board (selected offices or departments only) |
| Councils | — Alberta Research Council |

# administration & personnel

The Public Service Employee Relations Board consists of a Chairman, Alternate Chairman and four members, all of whom participate in their respective capacities on an ad hoc basis. Thomas W. Wakeling was appointed Chairman of the Board effective November 4, 1989, for a term of two years. On January 11, 1990 Kenneth J. Alyluia was appointed as the Board's Alternate Chairman for a three-year term.

Jack Dyck and A. Roderick Turpin were re-appointed as Board Members for a one-year term while Thomas K. Biggs and William Kondro were appointed as members for a two-year term, all effective November 4, 1989.

The Board is served by four full-time employees, all located in the Board's Edmonton office.

# judicial review — cases

Decisions of the Public Service Employee Relations Board which were the subject of judicial review during the reporting period include the following:

1. The Board of Governors of Lethbridge Community College,
   Lethbridge, Alberta
   (Applicant - Respondent)
   and
   The Alberta Union of Provincial Employees,
   Edmonton, Alberta
   (Applicant - Respondent)
   and
   The Public Service Employee Relations Board,
   Edmonton, Alberta
   (Respondent)

On March 20, 1987, the Board issued a decision setting out its determinations as to the arbitrability of a large number of items claimed in dispute by the Union and Employer, as part of the processing of an application for the establishment of an arbitration board. On April 8, 1987 and April 14, 1987 respectively, the Union and Employer each applied to the Court of Queen's Bench for orders quashing certain parts of the Board's decision. In addition, both applied to the Board for reconsideration and variance of affected portions of the Board's decision.

The Court of Queen's Bench in a judgement delivered on June 6, 1987, upheld the Board's determinations on all but one matter, on which it reserved, pending issuance of the Board's reasons.

An appeal taken by the Union from that judgement was dismissed by the Alberta Court of Appeal on June 8, 1988. A subsequent application by the Union for leave to appeal to the Supreme Court of Canada was denied on December 8, 1988.

The matter on which the Court of Queen's Bench reserved judgement on June 6, 1987 was, following issuance of the Board's decision and reasons, argued before the Honourable Mr. Justice E. A. Hutchinson. By way of a judgement issued February 1, 1989, the Court sustained the Employer's position and quashed the Board's determinations.

An appeal from that judgement initiated by the Board and the Union is scheduled for hearing in April 1990.

(PSERB Ref. 140-063-502 and 105-063-502)

2. The Alberta Union of Provincial Employees
   Edmonton, Alberta
   (Applicant)
   and

Her Majesty the Queen in right of the Province of Alberta,
Edmonton, Alberta
(Respondent)
and
The Public Service Employee Relations Board,
Edmonton, Alberta
(Respondent)

This application for judicial review by the Union relates to a decision and reasons issued by the Public Service Employee Relations Board on August 10, 1987, one in which the Board determined that certain persons engaged by the Crown as "contract teachers" were not employees for the purposes of the Public Service Employee Relations Act.

A judgement dismissing that action was issued by the Court of Queen's Bench of Alberta on December 20, 1988. An appeal from that judgement initiated by the Union is to be heard during 1990.
(PSERB Ref. 100-001-502 [12])

3. Her Majesty the Queen in right of the Provine of Alberta,
Edmonton, Alberta
(Applicant)
and
The Alberta Union of Provincial Employees
Edmonton, Alberta
(Respondent)
and
The Public Service Employee Relations Board,
Edmonton, Alberta
(Respondent)

This application for judicial review originates with a lengthy decision and reasons issued by the Public Service Employee Relations Board on February 19, 1989, concerning the implementation of earlier determinations made by the Board as to the bargaining unit status of certain persons employed by the Employer. The action by the Employer sought and was successful in quashing a portion of the Board's decision regarding its jurisdiction and remedial authority under Section 6 of the Public Service Employee Relations Act.

An appeal from the Court of Queen's Bench judgement taken by the Union is to be heard in the fall of 1990.
(PSERB Ref. 100-001-502 [13])

4. Foothills Provincial General Hospital,
Calgary, Alberta
(Applicant)
and
The Alberta Union of Provincial Employees,
Edmonton, Alberta
(Respondent)

and
The Public Service Employee Relations Board,
Edmonton, Alberta
(Respondent)

In a decision with reasons issued on February 6, 1990, the Board declined to exercise its authority under Section 9 of the statute, to remove seven recreational therapists in the hospital's employ from a bargaining unit represented by the Respondent Union. The Employer applied to the Court of Queen's Bench for an order quashing the Board's decision together with an order of mandamus remitting the application to the Board for determination as per the direction of the Court.

The application is scheduled for hearing in July of 1990.
(PSERB Ref. 100-041-502)

5. Her Majesty the Queen in right of the Province of Alberta,
Edmonton, Alberta
(Applicant)
and
The Alberta Union of Provincial Employees,
Edmonton, Alberta
(Respondent)
and
The Public Service Employee Relations Board,
Edmonton, Alberta
(Respondent)

On an application by the Union for the Board to determine an employee's bargaining unit status, the Employer raised a preliminary objection, arguing that the Board was without jurisdiction, as the subject individual held a position classified within the management classification plan, and further, that the individual had been excluded from the bargaining unit since prior to proclamation of the Public Service Employee Relations Act in 1977. In a decision and reasons issued on January 17, 1990 the Board dismissed the Employer's preliminary objection and held that it had jurisdiction to make the requested determination.

The Employer in response applied to the Court of Queen's Bench for an order quashing the Board's decision and has been scheduled for hearing in the fall of 1990.
(PSERB Ref. 100-001-502 [52])

# ANNUAL STATISTICS AND COMPARATIVE DATA

APRIL 1, 1989 to March 31, 1990

| Section of Act | Nature of Application | | Disposition 1987/88 | 1988/89 | 1989/90 |
|---|---|---|---|---|---|
| 9 | Determinations | Granted | 1 | 13 | 4 |
| | | Dismissed | 4 | 0 | 1 |
| | | Withdrawn | 0 | 5 | 5 |
| | | Outstanding | 11 | 22 | 40 |
| 11 | Reconsideration | Granted | 4 | 2 | 1 |
| | | Outstanding | 0 | 0 | 1 |
| | | Refused | 0 | 2 | 0 |
| 25 | Certification | Granted | 0 | 8 | 1 |
| | | Refused | 1 | 2 | 1 |
| | | Withdrawn | 0 | 0 | 0 |
| | | Outstanding | 5 | 0 | 0 |
| 46 | Appointment of Mediator | Granted | 1 | 9 | 1 |
| | | Withdrawn | 0 | 0 | 0 |
| 49 | Establish Arbitration Board | Granted | 4 | 1 | 2 |
| | | Refused | 1 | 0 | 0 |
| | | Withdrawn | 2 | 0 | 0 |
| | | Outstanding | 5 | 0 | 4 |
| 52 | Appointment of Chairman & Member to Arbitration Board | Granted | 4 | 1 | 0 |
| | | Refused | 0 | 0 | 0 |
| | | Withdrawn | 0 | 0 | 0 |
| 64 | Appointment of Adjudicator | Granted | 30 | 35 | 23 |
| | | Withdrawn | 0 | 9 | 3 |
| | | Refused | 0 | 0 | 0 |
| 74 | Unfair Practice Complaints | Granted | 1 | 1 | 0 |
| | | Dismissed | 0 | 1 | 1 |
| | | Refused/ Withdrawn | 2 | 3 | 0 |
| 74 | Failure to Bargain in Good Faith | Granted | 0 | 0 | 0 |
| | | Refused/ Dismissed | 0 | 0 | 0 |
| | | Withdrawn | 3 | 0 | 1 |
| 90 | Successor Trade Union/Employer | Granted | 0 | 0 | 0 |
| | | Dismissed/ Withdrawn | 1 | 0 | 1 |

| | | |
|---|---|---|
| Days of Board Hearings | – 1987/88 | 30 Days |
| | – 1988/89 | 23 Days |
| | – 1989/90 | 32 Days |
| Estimated number of employees affected by Certification | – 1987/88 | NIL |
| | – 1988/89 | 1615 |
| | – 1989/90 | 278 |
| Total applications disposed of | – 1987/88 | 59 |
| | – 1988/89 | 70 |
| | – 1989/90 | 45 |
| Total applications outstanding | – 1987/88 | 21 |
| | – 1988/89 | 22 |
| | – 1989/90 | 45 |

# budgetary review

## Approved Manpower and Operating Costs

PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

| | | % Change |
|---|---|---|
| 1987/88 | 471,730* | + 6.7* |
| 1988/89 | 450,687** | – 4.7** |
| 1989/90 | 465,000*** | + 3.2*** |

* Includes $106,000 Special Warrant.
** Includes $ 93,950 Special Warrant.
*** Includes $ 51,200 Special Warrant.

# in appreciation

The Board takes this opportunity to publicly express its appreciation to the Honourable Ken Rostad and his Executive Assistant, Ms. Dana Andreassen, for their assistance and co-operation in facilitating the activities of the Board during the period affected by this report.